

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

VICTOR SHAWN COLE,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 4:14-CV-2135-VEH
)	
PILGRIMS PRIDE,)	
)	
Defendant.)	

MEMORANDUM OPINION


On November 5, 2014, the magistrate judge's report and recommendation was entered and the parties were allowed therein fourteen (14) days in which to file objections to the recommendations made by the magistrate judge. No objections to the magistrate judge's report and recommendation have been filed by the plaintiff or the defendant.

After careful consideration of the record in this case and the magistrate judge's report and recommendation, the court hereby **ADOPTS** the report of the magistrate judge except to the extent that it recommends that Plaintiff's lawsuit be dismissed with prejudice. Instead, because the analysis contained in the report and recommendation is jurisdictionally-driven, the only appropriate type of dismissal is a without prejudice one. *See, e.g., Stalley ex rel. U.S. v. Orlando Reg'l Healthcare*

Sys., Inc., 524 F.3d 1229, 1235 (11th Cir. 2008) (affirming district court dismissal for lack of jurisdiction but reversing for entry of dismissal without prejudice rather than with prejudice). Relatedly, in the absence of any subject matter jurisdiction, Plaintiff's Motion for Leave To Proceed *In Forma Pauperis* and Motion To Appoint Counsel (Doc. 2) are both due to be termed as moot. The court therefore **ACCEPTS** the recommendations of the magistrate judge as modified herein and this action shall be dismissed without prejudice.

A separate order in conformity with this Memorandum Opinion will be entered contemporaneously herewith.

DONE and **ORDERED** this the 9th day of December, 2014.



VIRGINIA EMERSON HOPKINS
United States District Judge